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09-AFC-7C

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JUN 07 2013

STATUS CONFERENCE
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:)	
)	
Palen Solar Electric)	Docket No.
Generating System Amendment)	09-AFC-7C
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JUNE 3, 2013

10:00 a.m.

Reported by:
Peter Petty
Contract No. 170-09-002

EHLERT BUSINESS GROUP

(916) 851-5976

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

David Hochschild, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Gabriel Taylor, Advisor to Commissioner Hochschild

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

CEC STAFF PRESENT

Christine Stora, Project Manager

Jennifer Martin-Gallardo, Staff Counsel

Eric Knight, Environmental Office Manager

OFFICE OF THE PUBLIC ADVISER

Blake Roberts, Assistant Public Adviser

APPLICANT

Charles Turlinski, Director Project Development
Palen Solar Holdings, LLC

Scott Galati, Attorney
Galati/Blek, LLP

INTERVENORS

Lisa T. Belenky (via WebEx)
 Ileene Anderson (via WebEx)
 Center for Biological Diversity

Kevin Emmerich (via WebEx)
 Laura Cunningham (via WebEx)
 Basin and Range Watch

Elizabeth Klebaner (via WebEx)
 California Unions for Reliable Energy (CURE)

INTERESTED AGENCIES

Tiffany North (via WebEx)
 Tamara Harrison (via WebEx)
 County of Riverside

Jay Chen (via WebEx)
 Linda Liu (via WebEx)
 Colorado River Board of California

Amy Howard (via WebEx)
 Deborah Bardwick, Office of the Solicitor, US Dept of the
 Interior (via WebEx)
 National Park Service

ALSO PRESENT

Ken Waxlax (via WebEx)
 Mavis Scanlon (via WebEx)
 Sara Clark (via WebEx)

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P R O C E E D I N G S

10:00 a.m.

PRESIDING MEMBER DOUGLAS: Welcome to the status conference for the Palen Electric Generation Systems amendment process. My name is Karen Douglas. I am the lead Commissioner assigned to oversee this amendment.

To my left is our Hearing Officer, Ken Celli. To his left is the Associate Member of the committee, Commissioner Hochschild.

To Commissioner Hochschild's left is Gabe Taylor, his adviser, and to my right are my advisers, Galen Lemei and Jennifer Nelson.

With that, could I have applicant please introduce yourselves?

MR. TURLINSKI: This is Charlie Turlinski from Palen Solar Holdings. I am the project manager.

MR. GALATI: Scott Galati, representing Palen Solar Holdings.

PRESIDING MEMBER DOUGLAS: Thank you, and staff?

MS. STORA: Christine Stora, complaints project manager for the Palen Solar Project

MS. MARTIN-GALLARDO: Jennifer Martin-Gallardo, staff counsel.

PRESIDING MEMBER DOUGLAS: Thank you. Now, you have gone through intervenors, but should we do -- [Off

1 mic.] All right. So I'll go through the intervenors as
2 well. The Center for Biological Diversity.

3 MS. BELENKY: Yes. Hi, this is Lisa Belenky, and
4 Ileene Anderson is also on the line.

5 PRESIDING MEMBER DOUGLAS: Thank you. Basin and
6 Range Watch.

7 MR. EMMERICH: Hello. This is Kevin Emmerich, and
8 Laura Cunningham is also here.

9 PRESIDING MEMBER DOUGLAS: Thank you. Alfredo
10 Figueroa. That's Californians for Renewable Energy. Sounds
11 like he's not on yet. Is anyone here for California Unions
12 for Reliable Energy?

13 MS. KLEBANER: Yes. Good morning. This is
14 Elizabeth Klebaner.

15 PRESIDING MEMBER DOUGLAS: Good morning. Is
16 anybody here from the Laborers' International Union of North
17 America? Okay, not yet.

18 Is anyone here representing any public agencies;
19 federal, state, or local government agencies?

20 MS. NORTH: Tiffany North, County of Riverside.

21 MS. HARRISON: And then Tamara here. County of
22 Riverside Planning.

23 PRESIDING MEMBER DOUGLAS: Right. Thank you.
24 Great to have you on the line. Anyone else?

25 MR. CHEN: Jay Chen, Colorado River Board of

1 California.

2 HEARING OFFICER CELLI: Could you speak up a
3 little closer to the phone, please?

4 MR. CHEN: Jay Chen, Colorado River Board of
5 California. It is an agency in Glendale.

6 HEARING OFFICER CELLI: Mr.-- Is it Chen? Mr.
7 Chen, can you hear me?

8 MR. CHEN: Yes.

9 HEARING OFFICER CELLI: Is it C-h-i-e-n?

10 MR. CHEN: C-h-e-n.

11 HEARING OFFICER CELLI: Oh, Chen.

12 MR. CHEN: Chen. Yes.

13 HEARING OFFICER CELLI: Okay, and what
14 organization are you with? We are having a hard time
15 hearing you here. If you could speak loudly and clearly
16 into your phone.

17 MR. CHEN: Okay, let me call -- [Unintelligible.]
18 Okay, I have Linda Liu on the phone too, and the agency --

19 HEARING OFFICER CELLI: It is actually worse now.
20 Are you on a speaker phone?

21 MR. CHEN: Yes.

22 HEARING OFFICER CELLI: Can you use the handset,
23 please?

24 MR. CHEN: Okay. Handset. Yes. Okay, I am on
25 the handset now. The agency name is Colorado River Board of

1 California. We are the agency handling the Colorado River
2 water rights and interest.

3 HEARING OFFICER CELLI: The water board?

4 MR. CHEN: The Colorado River Board.

5 HEARING OFFICER CELLI: River Board. Okay.

6 PRESIDING MEMBER DOUGLAS: Thank you, Mr. Chen.

7 HEARING OFFICER CELLI: Thank you, Mr. Chen.

8 MR. CHEN: Thank you.

9 PRESIDING MEMBER DOUGLAS: Is anyone else here
10 from a public agency?

11 MS. HOWARD: Hi, this is Amy Howard with the
12 National Park Service.

13 PRESIDING MEMBER DOUGLAS: Thank you. Anyone
14 else?

15 MS. BARDWICK: This is Dee Bardwick, Office of the
16 Solicitor, representing the National Park Service.

17 PRESIDING MEMBER DOUGLAS: Thank you. Anyone else
18 here from any public agencies? Okay.

19 Let's see. The public adviser, Blake Roberts, is
20 here.

21 So, welcome. With that, I will hand this over to
22 the hearing officer.

23 HEARING OFFICER CELLI: Thank you, Commissioner.
24 Can you hear me back there? All the way back there,
25 Mr. Ogata?

1 MR. OGATA: Great. Yes.

2 HEARING OFFICER CELLI: The record should reflect
3 there is hardly anybody here today. This status conference
4 is -- we are putting this on -- first of all, this
5 conference has to do with the Palen Solar Electricity
6 Generation Systems, and it was scheduled in a notice that
7 was dated May 20, 2013.

8 The purpose of today's conference is to hear from
9 the parties regarding the status of the Palen Solar Electric
10 Generating System's amendment to their certified power
11 plant, and to help resolve any procedural issues, as well as
12 to assess the scheduling of future events in this
13 proceeding.

14 Today, the way we intend to proceed is we're first
15 going to hear from the applicant, who will summarize their
16 view of the case status and scheduling, followed by staff.
17 Then we will hear from the intervenor Center for Biological
18 Diversity, then Basin and Range Watch, hopefully, if they
19 show up or get on the phone.

20 MS. CUNNINGHAM: We are on the phone.

21 HEARING OFFICER CELLI: Oh, what is the name of
22 the -- oh, I have that. Okay, thank you.

23 So, we will first hear from -- we're going to hear
24 from CBD, the Center for Biological Diversity. Then we'll
25 hear from Basin and Range Watch. Then we'll hear from the

1 Californians for Renewable Energy, followed by CURE,
2 California Unions for Reliable Energy, and, finally, the
3 Laborers' International Union of North America. Then, after
4 that, we will provide an opportunity for the general public
5 to make a comment.

6 The Committee would like to hear on -- from all of
7 the parties regarding the schedule. Maybe we'll have a
8 discussion also about biology and some of these other more
9 hot topics culturally.

10 So, with that, let's hear from Mr. Galati for the
11 applicant, please.

12 MR. GALATI: Thank you, members of the Committee
13 and Hearing Officer Celli. Thank you for taking an interest
14 in the project, having a full Committee here to listen to
15 our status conference, and thank you for granting our
16 request for status conference.

17 As you know, we often ask for a status conference
18 in our schedule so that we have one schedule, so we can meet
19 face-to-face and talk about issues. We didn't have one in
20 this case, and we were just relying on status reports. I
21 find that, sometimes, status reports -- you learn
22 information from the other parties when you get a status
23 report.

24 And what we learned and what precipitated this
25 status conference was that staff was not going to be able to

1 meet their early PSA date of May, which was going to affect
2 the schedule and the scheduling order. So, we immediately
3 asked for a status conference, so that we could come in and
4 present to the Committee and ask for an adjustment in the
5 scheduling order, but one that meets our schedule -- one
6 that meets our commercial schedule. And so, we want to be
7 able to explain that to you.

8 As -- We have had lots of conversations about the
9 schedule. My understanding now is that staff would be -- is
10 shooting for a June 28th preliminary staff assessment. And,
11 if that is the case, with the June 28th preliminary staff
12 assessment, we still think we can meet our schedule,
13 although October would need to move to November. We were
14 asking for an October decision, and we could accept a
15 November decision.

16 That is a significant change to the project
17 because that means we would not be able to meet our fall
18 desert tortoise survey windows. Now, there are two survey
19 windows that you know of that construction is predicated
20 upon. The first is in the fall; the second would be in the
21 spring, in the March timeframe.

22 We wanted to make it very clear that missing the
23 fall desert tortoise schedule impacts the project severely;
24 but, we can still be okay because we can do two things. We
25 can -- we need to close financing by the end of -- by the

1 end of December, so that we can order equipment. And when we
2 -- if we can stay online with ordering that equipment and if
3 we can take the float out of our construction schedule, we
4 can still meet our June 2016 operating date. And our June
5 2016 operating date is very much dictated by the ITC.

6 As you know, the Investment Tax Credit, the ITC,
7 expires at the end of 2016. And, while in the days of ARRA
8 funding and DOE loan guarantees, the banks were very
9 comfortable with you going all the way up to the end of the
10 date, commercial lenders without a DOE loan guarantee are
11 not comfortable with that.

12 So, there is some amount of buffer to finance a
13 project now that you required, and we've been told that is
14 the June 2016 date. So, everything is predicated on that
15 June 2016 date.

16 So, we believe that if staff is able to meet its
17 preliminary staff assessment in June -- by June 28th, and if
18 they could meet a final staff assessment by August 23rd,
19 which would be a month move of the existing final staff
20 assessment, that, while it would be difficult for the
21 Committee, but we think it is completely doable with -- with
22 Hearing Officer Celli's ability to write a PMPD, get it
23 circulated in time for a December -- I mean, a November
24 decision. And then a November decision allows us to close
25 financing at the end of December.

1 Now, two things I want to point out to you is,
2 right now, our BLM schedule has a January 9th -- 8th or 9th? -
3 - 9th record of decision. As you know, that schedule is
4 primarily dictated by availability of working -- work of
5 consultants, and interior working. There are certain
6 comment periods. We believe it is possible for that
7 schedule to be moved to December and we are working very
8 hard to do that as well.

9 But, at the end of the day, we are -- we have --
10 we are compressing such that we don't have any margin. So,
11 what we would ask the Committee to do is to -- is to adopt
12 that change in schedule as I just described, and to schedule
13 other status conferences so we can stay on track.

14 There are two -- there is one primary thing that I
15 think is affecting our schedule. I'd first like to tell the
16 Committee, and I hope staff would -- would be able to
17 confirm that we've been working very well with staff -- [Off
18 mic.] We've been working very well with staff in being very
19 cooperative. We have been proposing solutions. We've had a
20 bunch of workshops right in a row. We've identified those
21 in your schedule and we think we are making great progress.

22 On the sticky issues that were very time-
23 consuming, there is one set of data requests that includes
24 some offsite work for cultural resources that we find
25 problematic. If I would have known that those data requests

1 would have become so critical to the schedule, I would have
2 objected on grounds that they are not necessary. And so,
3 I'd like to highlight those for you if I could.

4 The BLM and the Energy Commission have coordinated
5 on data requests to us, which, because of that coordination,
6 took a little longer time for us to get them. In addition,
7 the way the BLM is working is with an amendment to the
8 programmatic agreement. And because they're amending the
9 programmatic agreement, any work plan that is to do
10 additional work, both onsite and offsite, is part of the
11 work plan process.

12 Because it's an amendment to the programmatic
13 agreement, the work plan needed to be reviewed and have
14 public comment. And that process has taken long -- has
15 taken a long time that we will -- I don't believe that we'll
16 be able to get out in the field in time to get the data that
17 staff asked us in the data request.

18 We got the data request in the April timeframe,
19 and, in that data request, we could have gone out in the
20 field and done it, had it not been in the work plan, which
21 is still being circulated at this point. So, the earliest
22 we think we can get out in the field is late June to early
23 July. And obviously, the amount of work is about a four-
24 week effort in the field during the very, very hot time.

25 We even proposed trying to do the work with a

1 helicopter. BLM did not -- would not allow us to use a
2 helicopter to do that work. So, we're stuck with doing a
3 lot of offsite hiking in the heat of the summer in the
4 Palens and the Cockscomb Mountains to identify potential
5 rock art so that, if rock art was found in some sites like
6 that, and I apologize, I am summarizing it - it is more than
7 just rock art - an analysis can be done on indirect effects
8 of being able to see the project site. I would point out
9 that this is entirely within the visibility area of the
10 first project. Granted, the visuals look different; we have
11 two towers that glow.

12 We have done visual simulations from these areas,
13 not particularly from a known cultural area, but we've done
14 some in the Palen, we've done some in the Cockscombs. We've
15 also done -- we've done twenty-two visual simulations on
16 this project, including, I think, about seven or eight that
17 were specifically identified as known cultural resources.

18 We think staff can use that information to infer
19 that there could be more cultural resources in the Palen and
20 Cockscombs, and complete their analysis for CEQA purposes.

21 This is also consistent with BLM. BLM is not
22 using that offsite visual analysis in the Palen and
23 Cockscombs at these locations. They're not requiring that
24 for NEPA; they're requiring that as part of the further
25 programmatic agreement.

1 So, we can do the work. We just can't do it in
2 time to support our schedule. And we will do the work. We
3 just need -- we would like the Committee to think about this
4 and, ultimately, our homerun would be for the staff to go
5 forward without this information, do some inference, and get
6 us to a point where we can get our final staff assessment.

7 If we had to incorporate this into mitigation, if
8 we had to commit to doing this work and incorporating it,
9 and providing that information to staff, we've already
10 proposed that. We proposed that in our recent data
11 response.

12 That, to us, is the number one potential
13 information gap that would prevent staff from doing its
14 final staff assessment, if it continued to require it.
15 Otherwise, we think we can provide everything to staff in
16 time to be able to support an August 23rd final staff
17 assessment. That's the reason we asked for the status
18 conference.

19 HEARING OFFICER CELLI: Well, thank you for that
20 summary, Mr. Galati. I just want to ask you -- you said
21 that you could live with an FSA in August, but August
22 usually means August 31st.

23 MR. GALLATI: I asked -- August 23rd is what we're
24 asking. This is how we would play out the schedule and,
25 granted, I know I am talking to the Committee that would

1 have to work very hard to make this schedule work. If the
2 staff came out in August 23rd, we think we could go to
3 evidentiary prehearing conference and evidentiary hearing in
4 September -- in early September. The requirements under the
5 regulations are fifteen days after the final staff
6 assessment.

7 We think, because this is an amendment, that so
8 many of the areas are going to have agreement, that we might
9 have five or six areas that might need to go to evidentiary
10 hearing. Everything else is going to be -- we've already
11 agreed in staff assessment workshops on modifying the
12 conditions.

13 I think -- when the PSA comes out, I think you'll
14 see in our comments that we're in agreement on almost
15 everything, especially -- the areas that we're going to deal
16 with is cultural and, by the way, we've already agreed to
17 the conditions of certification for cultural.

18 The areas that we are going to need to probably
19 discuss is biology, and we've already proposed a suite of
20 mitigation for the avian impacts to try to avoid going
21 through the long hearing processes on solar flux. There is
22 traffic and transportation, because we are near I-10, and so
23 there is glint and glare issues we'll probably need to
24 discuss.

25 And I really -- there might be a few others -

1 worker safety and fire protection - a few other things, but
2 not major issues from our perspective. Those were the three
3 major ones that we anticipate.

4 So we really think that -- and I think -- I know
5 that this team and I have worked extremely hard to be able
6 to bring you the kind of cases that I try to bring you,
7 which is here's everything that we've agreed on. We don't
8 use the evidentiary hearing process to have a dialogue. We
9 use the evidentiary hearing process -- we've already had our
10 dialogue, we can't agree on this, we need the Committee to
11 make a decision.

12 I think we'll be able to do evidentiary hearings
13 in one day and that's not uncommon for projects that I've
14 worked on. That's where I think we're going to be. So, we
15 think that we would do a prehearing conference and an
16 evidentiary hearing very close to each other in the early
17 September timeframe. And we would be asking the Committee
18 to get a PMPD out in October. I recognize that that's a
19 four-week process and more than that, but it's our job to
20 bring you a case that's easy to write. If we don't, then we
21 haven't done our job.

22 But, we are talking about an amendment, and we are
23 talking about really focusing on how this project is
24 different. So, we'd like the Committee to consider that as
25 opposed to a brand new case. And we did a lot of hard work

1 on the Palen project. We solved a lot of issues on the
2 Palen project to get here to begin with, and we're taking
3 advantage of each and every one of those. And so, that's my
4 pitch for why it's possible.

5 HEARING OFFICER CELLI: Thank you very much.
6 Let's hear from staff about scheduling. What's going on
7 with the schedule, and your response to what Mr. Galati had
8 to say, please?

9 MS. STORA: Yeah, this is Christine Stora, project
10 manager for the Palen Solar Project. Yeah, currently staff
11 is targeting the June 28th PSA publication date. As
12 documented in our status report published on May 15th, staff
13 has received a lot of information from the project owner,
14 and it's been trickling in in drips and drabs. And we're
15 trying to incorporate as much of that as we can to provide
16 the most complete document that we can.

17 Now, in the May 15th status report, I do document
18 a lot of the major holes that we have that are not going to
19 appear in the PSA. Air quality is going to be missing. The
20 South Coast Air Quality Management District application -
21 that is still coming in.

22 For biological resources, pretty much all of the
23 surveys that staff would like to see, we currently don't
24 really have any data on. We've gotten some status updates,
25 like summaries of the reports, but those reports have not

1 come in, and staff really needs the excessive data that's
2 actually in the report, not just the summary, in order to do
3 their analysis.

4 We also have to do -- pardon me, we also need to
5 model the sand transport to determine direct -- pardon me,
6 indirect impacts from the modified project on sand
7 transport.

8 HEARING OFFICER CELLI: Is that -- are you
9 considering that bio or is that soil and water?

10 MS. STORA: That's under bio, I'm still on
11 biology, yeah, so the modeling of the sand transport impacts
12 would be a biological impact. I believe it's an indirect
13 impact to the fringe-toed lizard.

14 I'm not sure, currently, if we've gotten the more
15 recent status update from the applicant on the biological
16 opinion, but we are still waiting for that, I believe, as
17 well.

18 And then there is the cultural resources that
19 Scotty alluded to earlier that we wrote quite extensively in
20 the status report that documents the kind of time
21 constraints associated with doing these surveys and how that
22 would impact our schedule.

23 More specifically -- well, actually, I'm going to
24 let Eric Knight talk a little bit about the cultural
25 impacts. Eric?

1 HEARING OFFICER CELLI: Mr. Knight, if you're
2 going to use that microphone, then Ms. Stora, we're going to
3 have to turn yours off.

4 MS. STORA: Yeah, I'll turn mine off.

5 HEARING OFFICER CELLI: Because I can only have
6 three mics on at a time.

7 MR. KNIGHT: Good morning. Eric Knight,
8 environmental office manager. So, we have a series of data
9 requests as Mr. Galati laid out. We still need that
10 information, obviously to complete -- for the Commission to
11 at least complete its assessment of the project's potential
12 effects on cultural resources.

13 We've been discussing some options, internally,
14 about how that information could come in. In a perfect
15 world, we would like to see it before the FSA, but given the
16 applicant's schedule, that doesn't sound like it's doable.
17 The work plan that Mr. Galati referred to - that's a BLM
18 requirement.

19 They have to issue a field authorization permit
20 for archeologists to go out and do survey work on their
21 land. So, although our data requests were issued in April,
22 and the applicant was probably ready to get out there and do
23 the work, BLM's requirement to issue a permit and then
24 approve a work plan and then issue a permit, have a public
25 review comment period on all that, has delayed things a bit.

1 So, what we envision is -- now, is that
2 information coming in post-FSA, probably post-evidentiary
3 hearings, what staff would do is try to identify, the best
4 we can, what the potential impacts would be of the project
5 based on what we do know now, develop a suite of mitigation
6 measures that the Commission could consider in its decision.

7 I still believe -- under CEQA, you're still going to have
8 to make a finding of whether or not the project has impacts
9 or not that are significant, whether or not they can be
10 mitigated.

11 If they cannot be mitigated, then this Commission
12 can make an override; but, speaking with the attorneys, it
13 sounds like there is case law that supports -- it wouldn't
14 be seen as deferred mitigation if the Commission were to,
15 you know, identify the suite of mitigation measures that
16 would potentially mitigate the impacts. So, but, this
17 information is all going to come in to us post -- likely,
18 post-evidentiary hearings, if you adopt the schedule as
19 requested by the -- by the applicant -- by the owners.

20 HEARING OFFICER CELLI: Just a question on that,
21 because Mr. Galati was referring to some sort of worst-case
22 scenario. He didn't use those words, but some sort of -- is
23 it possible to, in order to meet the schedule, write from a
24 position of a worst-case scenario so that you can have
25 something in the FSA that's useful?

1 MR. KNIGHT: I'm not sure if I understand your
2 question.

3 HEARING OFFICER CELLI: Well, basically, you can
4 come up with performance standards for mitigation, based on
5 a worst-case scenario. I know we did that a lot in the ARRA
6 time.

7 MR. KNIGHT: I think it's possible. I mean, this
8 is a little bit more -- this is different than, say, like
9 biology or something like that, where, you know, you have a
10 sense of what the habitat, you know, types are like, and
11 what species you might find out there. So, you could do this
12 assumed presence thing.

13 With cultural resources, it is a little bit
14 different. We don't really know what is really out there,
15 so it's sort of hard to develop, you know, mitigation
16 measures. But, if we find more intaglio or we find more
17 rock, you know, more rock art or -- so, I think we could
18 develop certain mitigation measures for those resource
19 types. And so, like you said, more performance-based
20 mitigation measures, have some flexibility in there,
21 because, until you go out and do the surveys, you're not
22 really going to know exactly what's there.

23 Now, if it's specifically mitigated -- so, if the
24 conditions can be written in a way that allows that
25 flexibility that also meets CEQA's, you know, prohibition

1 against deferred mitigation, I would think this is the
2 balance we need to make, but --

3 HEARING OFFICER CELLI: Yes, and then the other
4 question I had is it sounds like what you're talking about
5 are really archeological-type resources.

6 MR. KNIGHT: Likely, yes. Right.

7 HEARING OFFICER CELLI: Okay, and so do we have a
8 situation with cultural and ethnographic resources in this
9 case as well?

10 MR. KNIGHT: Yes. And so, we have been doing
11 extensive Native American outreach to tribes, so --

12 HEARING OFFICER CELLI: Okay, because we did have
13 a bit of that in Hidden Hills.

14 MR. KNIGHT: Right.

15 HEARING OFFICER CELLI: And in a completely
16 different area, but it's difficult to kind of mitigate
17 still.

18 MR. KNIGHT: Correct. And until we do the surveys
19 -- until the surveys are done, you know, not knowing what's
20 out there, not knowing how the tribes may feel about those
21 particular resources, and whether they can -- they believe
22 that they can be mitigated or not, and that's a -- that's
23 going to be a question mark.

24 HEARING OFFICER CELLI: Mr. Galati.

25 MR. GALATI: Yeah, can I comment just to provide

1 some clarity on that? Yeah, there was a meeting with the
2 tribes, and they identified every place they wanted a visual
3 simulation. We've done it. So these are areas that the
4 tribes do not necessarily know about, or they would have
5 identified them for us to do visual simulations.

6 At our workshop, when we talked about -- it's a
7 thirty-one-square-mile area. Staff has been helpful in
8 saying you don't have to walk thirty-one square miles to go
9 look for things. They have identified particular locations
10 in the Palens and in the Cockscombs, and we proposed, in our
11 work plan, a way in which to do that. That hasn't been
12 approved yet.

13 And so, while June 17th is the best-case scenario,
14 in addition, BLM has asked us - and we've agreed to - is to
15 ask the tribes to come with us. So, I have a coordination
16 problem on that level, as well on when that will take place
17 and how many tribal representatives want to come, and can
18 they all make it on the day I want to go out there.

19 And we're not using a helicopter, so we're talking
20 about people that can walk a long distance and -- you know,
21 five to six miles from the car to go look at something, and
22 then come back five to six miles in the heat of the summer.

23 This is why I would have objected to this to begin with,
24 but we'll do it.

25 The thing I want to make sure that everybody

1 understands is, at the workshop with cultural staff, they
2 were clear that we don't have to look everywhere, but, once
3 we found some things, we probably could stop because it
4 would be evidence there might be more things. All I'm
5 asking is use what we already know to make the inference
6 that there might be more things. And we already have visual
7 simulations there.

8 So, that's where the difference, I think, is, is
9 how much do you need to do to support an inference? And I
10 just wanted to provide that additional input that, so far,
11 no one's told us that there are items out there that need to
12 be -- but, there probably are, and they're -- and it's a
13 good reason that there are. In the base of the Palen and
14 Cockscombs where the water used to collect, there's probably
15 evidence that there are archeological deposits there.

16 So, we appreciate what I heard from Mr. Knight,
17 that we can use after -- staff -- I just -- I still -- I'm
18 always nervous about bringing something in, reopening
19 evidentiary hearings, marking it as an exhibit, bringing it
20 in, and having it then, you know, fall to the Committee to
21 try to figure out how to incorporate that in, right in the
22 middle of writing the PMPD. I always find that that is not
23 as streamlined as we'd all like it to be.

24 HEARING OFFICER CELLI: That would definitely
25 throw a wrench in the works, because we're talking about

1 cultural, and you may recall, in Hidden Hills, when the
2 staff decided, in the middle of the stream, to determine
3 that some of it was comment not to be treated as testimony
4 and the other half was testimony. I sure hope we don't run
5 into that situation here. Any comment on that, I'd love to
6 hear.

7 MR. KNIGHT: Just -- I think we would like to
8 avoid that as well.

9 HEARING OFFICER CELLI: So, anything further about
10 schedule from staff?

11 MS. STORA: Yeah. This is Christine again. So,
12 yes. Currently, staff, with -- given these holes that I
13 just outlined -- oh, there was one other. Glint and glare
14 was the other one. We asked for information in Data Set 3
15 on glint and glare so we could do our glint and glare
16 analysis. That information has not come in, so we are also
17 proposing that the glint and glare be postponed, and the
18 full analysis of that will be in the FSA as described in the
19 status report.

20 So, currently, for the PSA, staff owes me all of
21 their sections on the 14th, and I'm giving management,
22 myself, and legal only two weeks to review this thing and
23 then publish it, which is a pretty tight schedule. We're
24 going to do our best to maintain it. I've had multiple
25 meetings with staff to try to expedite as much of this as we

1 can.

2 There are a lot of questions; there has been a lot
3 of data coming in slowly from -- particularly since our
4 responses to Data Set 2 didn't come in until May 15th. That
5 hasn't really given staff a lot of time to incorporate all
6 the new information, but we are doing the best that we can.

7 So, with that, yes, I believe we will have a PSA
8 on June 28th. The rest of the schedule for the Palen Solar
9 Project as we discussed, particularly with the cultural
10 issue, is a little bit unknown and we are trying to nail
11 that down.

12 And then, also, there's the missing information,
13 which we don't have. So, right now we have been bouncing
14 around the idea of bifurcating the FSA. There's a number of
15 topics that we have information on now that we could
16 potentially publish an FSA on June 23rd, June 28th. I'd
17 really like to give staff --

18 HEARING OFFICER CELLI: An FSA on June 28th?

19 MS. STORA: Pardon me, August. I think I was just
20 looking at the wrong line here. So, the FSA -- I know the
21 applicant would like August 23rd, but doesn't really give us
22 thirty days after the end of the comment period. Comments
23 would end -- what's that date? July 29th would be the end
24 of the thirty-day public comment period, if we are
25 successful in publishing the PSA on June 28th. So

1 publishing the FSA on August 23rd would be cutting staff a
2 little short on giving them thirty days to review all the
3 comments that come in. We'll try to do that. But probably
4 the more important part is all the missing information that
5 is still outstanding. If we bifurcate the FSA, we can't
6 really publish part two of the FSA with all the missing
7 information - such as bio, cultural, air quality - until
8 thirty days after we receive it all. And, right now, we
9 don't know when that date will be, because we haven't
10 received that information. But, we would propose that we
11 would bifurcate, publish part two with all the missing
12 information thirty days after we received it, and then
13 consult the rest of the schedule at that time, since that
14 date's unknown.

15 HEARING OFFICER CELLI: This doesn't sound
16 workable. I'm listening to this as -- you know, the only
17 thing that's going to come in in a bifurcated FSA is a bunch
18 of stuff that we can't do much with on the first half, and
19 all the stuff we really need we're going to get two weeks
20 before an evidentiary hearing. And so, what about that,
21 Mr. Galati?

22 MR. GALATI: Well, I first want to dispel the
23 inference that the applicant has been late. We have a Data
24 Request 3 right now, which requires it to be responded by
25 June 14th. We've beat every single date, less than thirty

1 days, to provide the data. And the reason it's been coming
2 in in drips and drabs is so that staff can continue to do
3 the work. I prefer to prepare one document; it costs me a
4 lot more to keep putting this and then docket that and then
5 docket another thing, and then compile it all together in
6 one place. So, staff's latest data request, that includes
7 the glint and glare, that includes the biology information
8 that they've asked for, that was given to us on May 15th.
9 So, two days before the original staff assessment was due,
10 we get data requests. We're doing the best we can to
11 accelerate, just like Commissioner Douglas told us to do.
12 If we want our schedule, we need to beat all our dates.
13 We've been beating all our dates. So, this isn't because
14 we've been late in providing the information.

15 The second thing is the only thing we're talking
16 about bifurcating is cultural. I haven't asked for any
17 other relief on any -- I believe that you will have all of
18 the biology survey data. First of all, the biology survey
19 data -- let's put this in perspective again.

20 There are two groups of biology survey data that
21 are related to the change in the project. The project is
22 entirely within the footprint of the original project, which
23 was going to be denuded flat. In fact, it's 472 acres less.
24 It doesn't go any further into the sand transport corridor
25 than the original project. The only reason we're talking

1 about sand transport is we've asked for a reduction in the
2 fifty-seven acres of indirect impacts, because we removed
3 the sand fences so that we think sand will flow through. So
4 we could model that. If we don't want to model that, if
5 that's going to delay us, we'll pay the fifty-seven acres.
6 Okay? If that's -- that's solved. No problem.

7 The second piece, though, is we added a gas line.
8 It's 2,950 feet within a previously-surveyed area; yet,
9 staff and the U.S. Fish and Wildlife Service asks to survey
10 it again. So we surveyed it again. Those reports are in.

11 The only other change is we moved the transmission
12 line -- the six-mile transmission line -- we moved 1,125
13 feet to the west to be right next to the Desert Sunlight
14 transmission line, which is being built within a previously-
15 surveyed corridor, and we surveyed that again. That is the
16 survey information that we're talking about that -- that
17 we've just recently completed, because we did it in the
18 spring and we submitted those reports.

19 There's one report that we have not been able to
20 submit, and that's the burrowing owl. When you resurvey,
21 the protocol changed, meaning we have to take a fourth
22 survey in summer. So, we can give you the results of the
23 first three: there were none. And go out -- and so, I
24 can't submit that report until July, but again, a
25 previously-surveyed corridor.

1 I would remind the Commission of what it did for
2 the Blythe Solar Power Project when they had them move their
3 transmission line because the Colorado River Substation
4 moved. I worked on that project. That move was
5 significantly more than what we're asking for. That project
6 was processed by staff in about three months, and it came to
7 a Commission vote. It's very simple. You calculate, within
8 the survey corridors, what the disturbance acreage is and
9 you change the mitigation.

10 Last, I'd like to remind you of the Genesis
11 project, which moved its transmission line and its gas line
12 to avoid cultural material -- moved about two miles, and
13 those resurveys. So, we're talking about very minor changes
14 here that, quite frankly, we didn't believe the staff needed
15 the surveys to do to begin with. But, to cooperate, we went
16 and did them.

17 I don't want that to be held against us - that now
18 these surveys are so late, we can't get it done. These are
19 entirely within surveyed corridors, just like the Blythe
20 project was and just like Genesis. All Genesis and Blythe
21 had to do was to survey the areas that were unsurveyed. Any
22 area that was within a survey, from 2009, 2010, was deemed
23 to be acceptable to staff at that time.

24 So I really want to leave the Committee with the
25 impression that we've gone above and beyond to cooperate,

1 and I don't want that lack of data to be used against us.

2 HEARING OFFICER CELLI: And I want to -- this is a
3 status conference. This isn't a hearing, so this is a
4 little more informal than usual. I really don't want to
5 take this conversation into the who's right, who's wrong,
6 who's been dilatory and who's been a Johnny-on-the-Spot.

7 I'm sure that all the parties are doing their best
8 to stay -- to keep the schedule, but even in light of
9 everybody diligently keeping the schedule, I already am
10 seeing that it looks to me like -- let's say we have our
11 evidentiary hearing sometime around September 10th to 20th, I
12 guess, if we could get those dates, then somewhere after the
13 evidentiary hearing, we're going to have to reopen in order
14 to take further cultural evidence, because there's more
15 evidence that's going to be coming in with cultural.

16 Then, we are going to have to put a PMPD together
17 and have the regular comment periods. Probably there would
18 be revisions, I imagine, if this cultural thing comes in
19 much later - get your extra fifteen days of comment period.

20 So, I mean, this is -- and, as usual, if there are -- if
21 there is any slippage in the schedule, it comes out of the
22 Committee's ability to get a decision out on time, which is
23 already kind of an impossible situation.

24 So, I don't -- I'm just trying to be realistic
25 here. I am -- I would love to see this go according to

1 schedule, but I'm not getting a sense that this is very
2 realistic.

3 MR. GALATI: Just to refine my request, my request
4 is not to take the cultural material in after the
5 evidentiary hearing. I'm saying the cultural material is
6 not necessary for staff's analysis. I will continue to do
7 it as part of the programmatic agreement. Staff will get
8 it, and they could use it. As in our Data Response 27, we
9 said we would go do the work, we would identify up to three
10 sites in the Palen, we would identify up to two sites in the
11 Cockscombs, we would record them, and we would include them
12 in ethnography as part of mitigation.

13 That was our proposal. It was not let's -- we'll
14 go do the information, get it to staff, and hold up the
15 schedule while it comes in. The bottom line is we are
16 trying to convince you that it's not necessary. And it
17 wasn't necessary for the first project, it wasn't necessary
18 for Bryce, it wasn't necessary for Ivanpah, it wasn't
19 necessary for Hidden Hills, and it wasn't necessary for Rio
20 Mesa. We understand why Palen's different, and so we'll
21 cooperate and do it, but it can't hold up our schedule
22 because we are cooperating.

23 HEARING OFFICER CELLI: Okay, and then you want --

24 PRESIDING MEMBER DOUGLAS: So, just on that point,
25 too.

1 HEARING OFFICER CELLI: Yes.

2 PRESIDING MEMBER DOUGLAS: I think the -- I think
3 that doing the analysis as thoroughly as possible and
4 proposing mitigation that you think is appropriate, so that
5 whatever new information is developed is unlikely to cause a
6 wrinkle in any of staff's recommendations, for example, or
7 the mitigation, is going to be very happy -- helpful, and we
8 will be happy when the time comes to entertain the thoughts
9 of the parties as to how to use this information and whether
10 it needs to be on the record. I don't think we need to
11 decide that today.

12 HEARING OFFICER CELLI: But you did ask for status
13 conferences, and how do you want to fit those in?

14 MR. GALATI: Let me explain why I want a status
15 conference, okay? Just like getting this status conference,
16 I had to file a request, a motion, it has to be noticed,
17 it's not on anyone's schedule, and we're meeting, you know,
18 on June 3rd about a PSA that was supposed to be delivered in
19 May. It doesn't help me very much to get what I really
20 wanted, which was the PSA, with holes, in May, and then we
21 can bifurcate the PSA and move forward, which is what I
22 really wanted to do, but I didn't get a chance to ask for
23 that because I didn't have a status conference.

24 So, what I'd like to do is to have another status
25 conference shortly after the comments come in on the PSA.

1 So, if they come out on June 28th, I'd like to have a status
2 conference in early August, right away, so you can get a
3 sense. Because what I'm -- what I think people are failing
4 to understand is how much the applicant has already agreed
5 to, and how few issues there are on this case, because of
6 the precedence from Hidden Hills and Rio Mesa.

7 Our petition agreed to all the conditions and
8 proposed changes to every condition we think we need. We
9 didn't punt, we didn't say it's not an impact; we assumed
10 impacts, went for that. And I think, when the comments come
11 in, you will notice that we're back to an amendment, instead
12 of an AFC, which is we're focusing on what the differences
13 are.

14 So, we'd like the ability to explain that to you,
15 to hold staff to the August staff assessment before -- I
16 don't want to hear a week before -- that we're not going to
17 make the date. And I'd like to have the opportunity to talk
18 about it and, if the Committee ordered a workshop for us to
19 go work out the issues at that day, we'll do that as well.
20 We have to keep our schedule, and so I'd like something on
21 the calendar, so -- because requesting it later just doesn't
22 work for us.

23 HEARING OFFICER CELLI: So, to recap: we have a
24 June 28th PSA coming out, we have an 8/1 status conference,
25 we have an 8/23 FSA, somewhere in the first week or two -- I

1 guess it would be in the second week of September, we would
2 have a prehearing conference. And we can probably
3 consolidate.

4 If the issues are limited enough, we could have a
5 prehearing conference and evidentiary hearing start
6 immediately following on the same day. So that could
7 abbreviate things. And then -- so, somewhere in there so
8 that you need -- what's -- the PMPD would need to come off
9 when, in order for you to have a final decision -- you'd
10 need a final decision in November?

11 MR. GELATI: Yes, we'd already even asked for a
12 special business meeting towards to the end of November,
13 because -- it being you only have one, it's sort of towards
14 the beginning of November. We'd be asking for a -- at the
15 end of November, a business meeting to consider.

16 So, that date would then back up thirty days or
17 more for the comment period. We asked the Committee to do
18 what they've done in the past for parties who require
19 comments on a PMPD to be done before thirty days. To come
20 to a conference during that thirty days, and then, you know,
21 we can handle our comments, which are the large majority of
22 the comments you receive on a PMPD are parties.

23 We could have that in the earlier November, and
24 that gives the Committee an opportunity to -- if they make
25 any revisions that don't require recirculation, to be ready

1 for a decision at the end of November.

2 I recognize we are asking for a lot, and part of
3 the reason is -- and this is one of the reasons why we
4 requested this status conference. When the data requests
5 were slow in coming out, when the BLM coordination on the
6 cultural resources was not as fast as we'd like it to be -
7 that ate up the schedule, it ate up the float that we had.
8 And so, now I'm looking to the Committee to crunch your
9 side, because I don't have any other place to go.

10 HEARING OFFICER CELLI: Okay, so I'm looking at
11 the calendar now. So, the second week of September is the
12 week of the 9th through the 13th. Let's say that, somehow in
13 there, we're able to accomplish prehearing conference and
14 evidentiary hearing in there somewhere between, let's say,
15 September 9th and September 20th.

16 MR. GALATI: Okay, I --

17 HEARING OFFICER CELLI: Somewhere in there.

18 MR. GALATI: Okay.

19 HEARING OFFICER CELLI: That gives us -- because
20 you need an 11/30 end of the comment period. That gives us
21 two weeks to write the PMPD. Because if I finish the PMPD
22 by September 30th -- oh, no, I'm in October. I'm sorry. I
23 skipped a month. So I have -- okay, I see what you've got,
24 so we can --

25 MS. BELENKY: Mr. Celli, this is Lisa Belenky.

1 HEARING OFFICER CELLI: Yeah, go ahead, Ms.
2 Belenky.

3 MS. BELENKY: Are the parties going to have a
4 chance to discuss this before you set the schedule?

5 HEARING OFFICER CELLI: Yeah, actually, you know
6 something? Let's start with you now, and we'll go serially
7 to each and take comments from each of the intervenors,
8 beginning with Center for Biological Diversity. Go ahead,
9 Ms. Belenky.

10 MS. BELENKY: Thank you. I wanted to respond to
11 several things. The company has made it quite clear that
12 they are in a rush. That, however, has nothing to do with
13 the requirements that the Commission must meet. This is
14 technically an amendment, but it is a major amendment, and
15 it is several years after the original approval and things
16 have changed.

17 The change in the project itself is very
18 significant. With the addition of the two 750-foot towers
19 and the different design, it is extremely significant. It
20 is significant not only to visual resources, which I think
21 everyone has certainly admitted, but also extremely
22 significant for biological resources, particularly avian
23 resources.

24 From the Center's point of view, the avian surveys
25 have not been completed yet. They are not -- the company

1 has resisted doing full surveys that we believe need to be
2 done, and we have written this in our status reports and
3 gotten no response. So, if the company is in a rush, they
4 should have done more work on these avian issues in
5 particular earlier on. That's our position.

6 However, the company now is saying, well, that's
7 okay, because we'll just get the analysis and jump to
8 mitigation, and we suggested all sorts of mitigation. Well,
9 however, that is not how CEQA works. And we absolutely
10 object to that. We believe that the resources need to be
11 fully analyzed and the impacts need to be fully analyzed.
12 Before we can even begin to discuss mitigation, we must
13 discuss avoidance as well. And that is true for all of the
14 impacts to biological resources, not just the avian impacts.

15 As far as the sand areas and the impacts to the
16 Mojave fringe-toed lizard, the Center, of course, objected
17 to this use of the sand areas from the beginning of this
18 process to the original approval, and we still object. In
19 fact, frankly, we cannot imagine why anybody would want to
20 put mirrors in an area where there is active sand transport,
21 which there is, even in these areas that are called Areas 2
22 and 3. Sand is still sand moving.

23 Also, sand does not only move in one direction.
24 Although there is a prevailing direction that the sands are
25 moving, as anyone who lives down there will tell you or has

1 been down there, the winds actually go in many directions on
2 many different days. So, therefore, the sand will also be
3 impacting these mirrors. It is really, quite frankly, as I
4 said, astonishing to us that anyone would want to put
5 mirrors in this area with this much sand blowing.

6 While I'm on the topic of sand, we're also very
7 concerned with soils and air quality issues in this area.
8 There have been several incidents with other projects in the
9 area where the soils and the air quality were very
10 significantly impacted during construction. And so, I think
11 a lot more work needs to be done on that issue.

12 Okay, so that's only the first few issues. I want
13 to say the company has, many times, referred to other
14 projects and how fast things were done, especially during
15 the ARRA projects, and I have to say that that is a very
16 interesting analogy because, as we all know from the lessons
17 learned process, many mistakes were made because they were
18 rushing. And, in particular, Genesis, because it was
19 brought up -- there were large amounts of cultural resources
20 found after the fact, because the company did not do the
21 kinds of surveys that were requested at that time by other
22 parties' intervenors. So I just wanted to say that.

23 Also, we had the horrible and very sad impacts to
24 the desert kit fox in that area that were unpredicted. Kit
25 fox were never adequately surveyed in the area, and this

1 kind of impact was never even addressed. Also, on the
2 Ivanpah project, of course there were major problems there
3 with the initial surveys that the agency -- the Commission
4 relied on in the approval.

5 So, rushing I do not think works. I do not think
6 it is consistent with CEQA, and we would very much oppose
7 the idea that the Commission could simply skip entire areas
8 of gathering data that is necessary for the analysis, and
9 skip over that and jump to mitigation. We absolutely will
10 object to that and we will object now.

11 As far as the schedule, if all the data was in, we
12 do not object to a schedule that moves in a quick manner;
13 however, the way you are discussing the schedule right now,
14 there would be no time for briefing. You would have a
15 hearing and then you have your PMPD. There would be no
16 briefing at all. So, that's a very important problem.

17 HEARING OFFICER CELLI: But --

18 MS. BELENKY: We do think that's it's very
19 important also that the public gets a full chance to
20 comment, and that those comments are fully considered.

21 HEARING OFFICER CELLI: That's great. Ms.
22 Belenky, I just want to talk to you about the briefing
23 schedule. If -- typically what happens is, after the
24 evidentiary hearing, we get our transcripts, usually within
25 about ten days after the close of the evidentiary hearing,

1 and I'm looking over at our court reporter, Mr. Petty, who's
2 giving me an okay sign on that.

3 So, let's say ten days - and really, what I
4 believe that what we can do is have an opening brief due,
5 let's say, twenty days or so after the evidentiary hearings,
6 and then rebuttal briefs due within ten days of that,
7 because, really, the briefs are for the benefit of the
8 Committee and they're usually integrated in the PMPD. So, I
9 think that what I just described is -- would be consistent
10 with this proposed new timeline that the parties are giving
11 me. But, do you see it any differently, Ms. Belenky?

12 MS. BELENKY: I do, because you're saying then you
13 would come out with a PMPD basically the day you get the
14 rebuttal brief. So, it doesn't give anyone the sense that
15 they're really being heard, you know. And I really don't
16 see -- well, twenty days and ten days sounds fine on the
17 face of it, but, of course, it depends on when the
18 transcripts actually come out. That's also assuming the
19 company is assuming a one-day hearing, which I do not think
20 is likely and that -- you know, the dates -- that's fine.
21 But -- I'm not saying the briefing has to be longer, but I
22 think you need more time after the briefing comes in so that
23 we would have any sense that you could have possibly
24 incorporated the briefing in your PMPD.

25 HEARING OFFICER CELLI: I think you raise a good

1 point. What I'd like to do is hear from all the intervenors
2 first, and then I would like to -- when we -- after we've
3 heard from the intervenors, sort of hear from applicant at
4 the end about how to deal with briefs in general. So, is
5 there anything further from the Center for Biological
6 Diversity?

7 MS. BELENKY: I think I hit the main points. I
8 just want to say that we, you know, very strongly -- oh, the
9 one -- the other thing I wanted to say, actually totally
10 separate, but not totally separate, about the BLM process.
11 Just to be totally clear, although the Commission approved
12 this project, the BLM never approved this project. There
13 was never any site control. It was never approved.

14 The BLM is going back to the draft stage and is
15 going to redo their environmental analysis. They've --
16 other new information, as I mentioned, on the Mojave fringe-
17 toed lizard, and there is a lot of information needed on
18 avian species and the impacts.

19 For those two reasons, I do not think it is
20 appropriate to be rushing to BLM with some deadline that the
21 Committee has. This is a very important issue. This is on
22 public land. The changes in the project are significant.
23 And, in fact, I really think that this is a whole new
24 project, but -- given that they are trying to do it as an
25 amendment, and we have said that we would participate on

1 that basis, we cannot skip over any steps here.

2 HEARING OFFICER CELLI: Thank you, Ms. Belenky.

3 Mr. Kevin Emmerich, are you on the line still, please?

4 MR. EMMERICH: Hello, yes, and can you hear us?

5 HEARING OFFICER CELLI: Not very well. Are you on
6 a speaker phone?

7 MR. EMMERICH: Is this a little bit better?

8 HEARING OFFICER CELLI: Not that much better,
9 actually.

10 MR. EMMERICH: It's going to be difficult for me
11 to use another phone.

12 HEARING OFFICER CELLI: Okay. We're going to have
13 to -- is there a way to turn the volume up here? I guess I
14 lost my support people. So, okay, we'll just try to be
15 quiet and, please, if you could try to speak up, Mr.
16 Emmerich. Go ahead on scheduling.

17 MR. EMMERICH: Okay. Well, I'll try. I'd like to
18 say -- I actually agree with the Center of Biological
19 Diversity about the scheduling. In our view, this is quite
20 an expedited schedule, considering that we do not believe
21 that a lot of the issues that have originally been raised
22 have been resolved, and we would feel more comfortable
23 seeing more surveys and examinations done on some of these
24 issues before some of these events are scheduled so quickly.

25 I'll just outline some of the issues -- the four

1 issues that we're very concerned about. I'll start with
2 visual resources. Of course, that's always a problem.
3 Everybody admits that, as Lisa said. This is going to be an
4 impact -- a major impact to the visual resources of the
5 whole Chuckwalla Valley area, and we are concerned about
6 that.

7 Primarily, these are going to be very tall power
8 towers. The glow -- the glint on the Ivanpah power towers,
9 when you see those turned on now, is very significant in
10 that area, and, when that's in full operation, that will
11 fully change the character of the landscape of that
12 particular area. Not only that, the nighttime landscape is
13 just going to be continuously changed by the flashing lights
14 - I believe sixteen flashing lights on each power tower.

15 We really like Joshua Tree National Park. That
16 national park has already taken a visual hit from some of
17 the photovoltaic projects being built next to the boundary.

18 This is going to be even different three-dimensional
19 impacts, and that is going to be significant as well.

20 For that reason, it might even be important to
21 consider a photovoltaic alternative for the site. We would
22 not support that because it would have habitat --
23 unmitigable habitat impacts, but it would still almost
24 satisfy some of those problems. And it should -- actually,
25 we should slow down and take a look at that and consider

1 those photovoltaic alternatives offsite, out of the area.

2 We're also concerned about the air quality. We
3 brought that up before. There's a lot of solar projects now
4 that have been developed - wind projects, large renewable
5 energy projects - in the desert. High evaporation rates
6 just cannot be mitigated. There have been problems with
7 dust from the Genesis project and the Desert Sunlight
8 project. We're concerned about public health and Valley
9 Fever. There have been recent reports of increases of that
10 in the southwest. There have been documented cases of
11 workers coming down with Valley Fever in the Central Valley
12 in California actually on a solar energy project. And I
13 just recently became aware of a report. In 1943, the Desert
14 Training Center in Yuma, Arizona, had a training mission
15 over by Palen Pass, twenty-two miles west of Blythe,
16 California, and the participants had an outbreak of Valley
17 Fever. I can actually send that to you if you don't have
18 it.

19 We're also concerned, finally, about the
20 biological resources, of course. We agree with the Center
21 for Biological Diversity on the Mojave fringe-toed lizard.
22 We're not satisfied that it's fully analyzed how the
23 reconfiguration of this project will impact the sand
24 habitat. We keep hearing that it's less from the applicant;
25 but, in a lot of ways, it's changed fundamentally with those

1 large posts from the heliostats. We just really don't know
2 how that's going to impact -- indirectly and cumulatively
3 impact the Mojave fringe-toed lizards in the area. So, we
4 think that's a big issue and would like to see more studies
5 on that and more surveys conducted.

6 And, finally, I'd just like to say the avian
7 issues are something that I don't think we have any
8 information -- that those two large power towers will be
9 centrally located right there in the middle of the
10 Chuckwalla Valley. And we're reading a lot of interesting
11 information about power towers, and how they create
12 thermals, and that can actually attract some raptors, and
13 it's going to be very -- well, it's just a big concern to
14 see how that's going to impact the populations of that area.

15 I mean, furthermore, the lake effects from the heliostats
16 might actually serve as a way to attract birds and actually
17 get caught in that solar flux effect.

18 We are aware that there have been surveys about
19 twenty miles just around the Cockscomb Mountain. They have
20 found golden eagles and nesting golden eagles, and we
21 believe that it would be really important to examine the
22 impacts now of the project that was approved to the north,
23 the Ivanpah Solar Project. That's going to be in full
24 operation pretty soon.

25 It's operated by a different company now, but,

1 before we start approving and rushing through these
2 environmental reviews for the Palen Solar Project, it would
3 probably be a good idea to take a look at how the solar flux
4 is actually impacting the bird population up in the Ivanpah
5 Valley.

6 And so, that would be a summary of our comments.
7 We'll have a lot more, but I guess I'll leave it at that.
8 Thank you.

9 HEARING OFFICER CELLI: And thank you, Mr.
10 Emmerich, for your comments and for hanging in there with
11 us.

12 One moment, Matt? The reason we had to turn the
13 volume up was because the phone was really low. [Off mic.]

14 Okay. So, we've now heard from CBD; we've heard
15 from Mr. Emmerich from Basin and Range Watch. Is there
16 anyone on the phone from Californians for Renewable Energy?
17 Anybody? Do I have Alfredo Figueroa on the telephone or
18 anyone from Californians for Renewable Energy or CARE?

19 Okay. Hearing none, Ms. Klebaner for CURE.

20 MS. KLEBANER: Thank you. We don't have any
21 comment at this time.

22 HEARING OFFICER CELLI: So, you're indifferent as
23 to the schedule?

24 MS. KLEBANER: Well, we are part of the conflict
25 and we will abide with whatever schedule the Committee

1 develops. We don't have anything to add to what has already
2 been said today.

3 HEARING OFFICER CELLI: Okay, thank you. Is there
4 anyone on the phone from Laborers' International Union of
5 North America? What do they call it? LIUNA, is that what
6 they call it? LIUNA? Is there anyone from LIUNA on the
7 phone? Let's see, I've got a couple of people who are muted
8 that I'm going to -- I've got Scott Blek. I've got Mike.
9 Anyone from LIUNA on the phone? LIUNA. Okay. Apparently
10 not.

11 Okay. So far, in terms about talking about
12 scheduling, from what I can sense, the biggest issue so far
13 raised is the briefing schedule. Mr. Galati, do you have
14 some ideas on that?

15 MR. GALLATI: Yeah. First of all, I want to
16 clarify something. I told you there were two areas of
17 biological surveys and I only told you one. The second one
18 was all the avian issues. We've been out there continuously
19 in the winter, in the spring. Those data are provided to --
20 are going to be provided to staff as part of their Data
21 Response Set 3. And, I mean, we've had seven, eight, ten
22 people out there at a time all spring. We have summer
23 protocols and fall protocols. They are also woven into our
24 mitigation so that they continue.

25 So, we didn't just throw mitigation at the issue.

1 We have identified species, and that information will be,
2 we think, more than enough time for staff to include, at
3 least in their final staff assessment, if not their
4 preliminary staff assessment.

5 As far as briefing goes, I will go back to the
6 purpose of briefs. In my mind, the purpose of briefs are
7 not argument; the purpose of briefs are to tell the
8 Commission very specifically a legal issue.

9 Evidentiary hearing is the time to present to the
10 Committee what they think the Committee should rule. I
11 think we've come down to making this very, very
12 adjudicatory. Let's make it very lawyer-like. Let's have
13 evidentiary hearings with cross-examination. I see that the
14 Committee is moving away from that and doing information
15 hearings, which I fully support.

16 I think the way to handle this is make -- I think
17 your evidentiary hearings would be so much better if you
18 made a lawyer do an opening argument and a closing, and you
19 gave them time limits just like a court. Because that keeps
20 you on track; otherwise, you can take forever.

21 Then, there has been many cases that I have worked
22 on where the Committee has not needed briefs nor requested
23 briefs. Briefs are not a party's right; briefs are up to
24 the Committee. If the Committee needs briefs, we'll do
25 that.

1 From our perspective, as an applicant, if I need
2 to go back and brief something that I didn't anticipate,
3 something either came up that we didn't anticipate, new
4 evidence came in that I didn't get a chance to reply to, or
5 I haven't done my job.

6 So, any legal issues, I often bring in a motion *in*
7 *limine* if I think you need to go this way or that way -
8 those are what briefs are for. They are not here's how you
9 should rule, Committee. That's not what they're supposed to
10 be for. That's what evidentiary hearings are.

11 So, I think that if, again -- and I have brought
12 cases, this case -- the Palen project would have been
13 completed in one day, but we had a schedule conflict, so we
14 moved something. The entire project would have been done in
15 one day of evidentiary hearings. The Blythe project was
16 done in one day of evidentiary hearings. The Genesis
17 project was done in two-and-a-half days of evidentiary
18 hearings. Those -- and that was highly contested. So, I
19 don't believe that this concept that what was scheduled in
20 Hidden Hills is the norm. It's not the norm. We shouldn't
21 make it the norm. That's my concept on briefs.

22 I would also remind the Committee that we filed in
23 December. We actually might take longer to approve this
24 amendment than we did the first project. And that doesn't
25 make sense to me. So, we didn't need very significant

1 briefs in the first project and we shouldn't here. But, the
2 Committee can decide that at evidentiary hearing -- do you
3 need briefs based on what we tell you.

4 HEARING OFFICER CELLI: Briefs are useful. But --
5 we like to have them, but we understand your point of view.

6 Staff, anything on briefs or on the schedule?

7 And while we are on the subject, something that
8 was raised by Mr. Emmerich, I think, or Ms. Belenky, is
9 Ivanpah. Ivanpah is up and running now. Is there some way
10 -- is there -- what kind of monitoring is going on in
11 Ivanpah, and are we going to be able to benefit from that in
12 this case? Anyone?

13 MR: GALATI: I can answer that. There is an avian
14 protection plan, and there is monitoring. The kind of same
15 avian protection plan that the Committee required in this
16 case, required in Blythe. And, as you know, that has
17 modified over time. We have taken what we've learned from
18 the development of that avian protection plan, and we put it
19 in our mitigation in this project.

20 So, whether there'll be data available, I don't
21 know, because the avian protection plan is still not
22 approved for all agencies. It takes a long time.

23 MS. STORA: I'd like to add that -- this is
24 Christine, by the way, for those of you on the phone --
25 Ivanpah has just been under testing so far and has not been

1 operational yet, so we haven't really seen a lot of
2 information come in on the Ivanpah.

3 MS. MARTIN-GALLARDO: This is Jennifer.

4 MS. BELENKY: This is -- oh --

5 HEARING OFFICER CELLI: One moment, Ms. Belenky.
6 Go ahead, Ms. Martin-Gallardo.

7 MS. MARTIN-GALLARDO: No problem. This is staff
8 counsel for staff. As far as the discussions on schedule, I
9 think staff agrees with them. The one caveat I would have
10 is staff does feel that they need thirty days from complete
11 information to make their schedule.

12 From these discussions, and assuming the applicant
13 is able to provide that information, August 23rd is
14 something that we feel is doable. We're satisfied with an
15 August 1st status conference to inform the Committee of any
16 problems that we seem to be running into. I agree, that's a
17 very good idea, for us to identify issues early and come up
18 with solutions as fast as we can.

19 Staff is aware of their CEQA obligations and is
20 working hard to meet those and feels that we will be able to
21 do that with -- after the discussions we've had here.

22 HEARING OFFICER CELLI: One moment. Ms. Belenky,
23 go ahead.

24 MS. BELENKY: Yes, hi. I'm actually confused
25 about what Mr. Galati is suggesting, and as far as

1 adjudicatory hearing as opposed to evidentiary hearings and
2 whether he is suggesting we go back to a more formal hearing
3 process. I assume that will be in one of his other status
4 reports, if he is actually making a motion on that basis.

5 But, I have to say, at the evidentiary hearings
6 that I have been a part of, which I think are only five or
7 six at this point, we have never, ever [telephone cut out]
8 during that time, and so, if you don't have briefing, it is
9 very difficult to have any legal argument. And I do not
10 believe that this can be fully discussed without having some
11 sets of briefings on contended legal questions.

12 So, I am actually confused as to what he is
13 suggesting, and I am confused as to what the -- what we are
14 now even talking about with the schedule. Are we now
15 talking about not having any briefing at all, and having
16 full arguments during hearings? And then the hearings still
17 would probably take longer than one day. Are we talking
18 about having each party have exactly the same amount of time
19 to speak, and each party having exactly the same amount of
20 time to present issues, and each party having exactly the
21 same amount of page limits? That would be very interesting.

22 That is not what I have seen in any of the hearings I have
23 been a part of.

24 HEARING OFFICER CELLI: Right. I think, Ms.
25 Belenky, that Mr. Galati was expressing his personal opinion

1 regarding the futility of briefs. I'm pretty sure that -- I
2 personally don't agree with him. I think the briefs are
3 extremely helpful and I can't imagine that we would proceed
4 without a briefing schedule. So, take it with a grain of
5 salt is what I'm saying.

6 I just want to go off the record for one moment
7 and talk to the Committee.

8 [OFF THE RECORD AT 11:21 A.M.]

9 [ON THE RECORD AT 11:23 A.M.]

10 HEARING OFFICER CELLI: And I would state, for the
11 record, then that we will notice an August 1 status
12 conference. We will put together, I guess, a new scheduling
13 order that reflects a June 28th PSA, an August 23rd FSA, and
14 an August 1st status conference, and try to build into that
15 a realistic prehearing conference/evidentiary hearing
16 committee conference/PMPD file decision. See if we can't
17 make this work for everybody.

18 If there's nothing further, then, from applicant
19 or the parties. Let me go around and ask, before we go to
20 public comment, is there anything we need from applicant
21 before we go to public comment?

22 MR. GALATI: No, thank you.

23 HEARING OFFICER CELLI: Staff?

24 MS. STORA: The only thing I'd like to add is that
25 -- excuse me -- that the project owner and staff have been

1 working really well together in providing data and
2 information back and forth. I didn't want to imply that we
3 were not working well together earlier.

4 HEARING OFFICER CELLI: I hope you can keep that
5 going. Ms. Belenky, anything further before we go to public
6 comment?

7 MS. BELENKY: Well, I'm a little confused because
8 I also heard staff say they couldn't make an August 23rd
9 date for the FSA. So apparently, that's -- that even if
10 they said this, apparently that is not what you're
11 proposing.

12 HEARING OFFICER CELLI: Ms. Stora?

13 MS. STORA: Yes, I would prefer to have thirty
14 days after the public comment period closes, so I'm just
15 noting that, yes, we can do an August 23rd date, but that is
16 going to be tight. So, if we get substantial public
17 comment, that may or may not be a problem. So, that was
18 mostly what I was just commenting on is that, you know,
19 we're shaving more time off the schedule by proposing an
20 August 23rd date there.

21 HEARING OFFICER CELLI: Thank you. Does that
22 clear that up for you, Ms. Belenky?

23 MS. BELENKY: Yes.

24 HEARING OFFICER CELLI: Okay. Anything further
25 from the Center for Biological Diversity?

1 MS. BELENKY: Not at this time, thank you.

2 HEARING OFFICER CELLI: Anything further from
3 Kevin Emmerich over at the Basin and Range Watch?
4 Mr. Emmerich? He appears to have gotten off the phone. How
5 about CURE? Elizabeth Klebaner?

6 MS. KLEBANER: Thank you. We don't have any more
7 comments at this time.

8 HEARING OFFICER CELLI: Thank you. Is there
9 anyone on the phone from LIUNA, Laborers' International
10 Union of North America? Or the California Unions for
11 Reliable Energy, Alfredo Figueroa? Okay.

12 Hearing none, let's go to public comment. I have
13 the public advisor here. Let's hear from the public advisor
14 on a microphone, please. Sure, we can take agencies first,
15 if -- is there anyone here? Okay, the public advisor is
16 indicating there are no members of the public here in the
17 house who would like to make a comment.

18 So, we will go to the phones, and the way I'd like
19 to proceed today is we'll start with the agency comments
20 first. So, if there's a person who's on the phone who would
21 like to make a comment who is a member of a federal or state
22 agency, or even a county, let's hear from those folks. Go
23 ahead. Adam Rush? Okay. Amy Howard? Amy Howard, did you
24 wish to make a comment?

25 MS. HOWARD: No. I don't have any comments at

1 this time.

2 HEARING OFFICER CELLI: Thank you. Ann Crisp.
3 She's with staff. Okay, I'm going to click her off.
4 Deborah Bardwick from Department of Interior Park Service?

5 MS. BARDWICK: No comments at this time, thank
6 you.

7 HEARING OFFICER CELLI: Thank you. Ken Waxlax?

8 MR. WAXLAX: No comments at this time, thank you.

9 HEARING OFFICER CELLI: Thank you. Linda Liu?

10 MS. LIU: We have no comments at this time.

11 HEARING OFFICER CELLI: Thank you. Mavis Scanlon,
12 I believe you're with -- Any comment from Mavis Scanlon?

13 MS. SCANLON: No, not at this time.

14 HEARING OFFICER CELLI: Thank you. Mr. Chen of
15 the Colorado River Board? Mr. Chen? Okay, he seems to have
16 gone away. Sara Clark?

17 MS. CLARK: No comments at this time, thank you.

18 HEARING OFFICER CELLI: Okay, Scot Blek? He's
19 with you, Mr. Galati? Okay. Tiffany North?

20 MS. NORTH: Yes, I just had one quick question.
21 We've been meeting with the applicant and I think the
22 meetings have been going well, and I assume that the
23 meetings will continue. But, under the timeframe you guys -
24 - that's been proposed, the public comment period on the PSA
25 would close on July 29th. Is that correct?

1 HEARING OFFICER CELLI: It looks like that's
2 correct.

3 MS. NORTH: Okay. Basically, the comments would
4 have to go our board of supervisors for approval, and I'm
5 just looking at their schedule, and their board meetings in
6 July are July 16th and July 30th. So, if the county, for
7 some reason, had to comment on the PSA and our comments came
8 in after July 30th, would they still be considered?

9 HEARING OFFICER CELLI: Yes, and that is one of
10 the beauties of our process is that comments just don't end
11 because a PSA or an FSA is published. There is going to be
12 a comment period on the PMPD. There's going to be a comment
13 opportunity at the final decision when it's adopted by the
14 full Commission.

15 MS. NORTH: Okay. Great.

16 HEARING OFFICER CELLI: There are other
17 opportunities, but, having said that, Ms. North, I'm going
18 to encourage you -- you're with County of Riverside, right?

19 MS. NORTH: Yes.

20 HEARING OFFICER CELLI: So, I'm going to encourage
21 you to stay in communication with the applicant, because a
22 lot of these issues shouldn't show up as a surprise at the
23 last minute. I think you probably already know what most of
24 them are, so --

25 MS. NORTH: Yes, and we've been meeting with

1 applicant.

2 HEARING OFFICER CELLI: That's great. So, I want
3 to encourage you to keep those communication channels open
4 so that we can actually officially take care of the issues
5 that arise with the county. So, thank you for that.

6 MS. NORTH: Thank you.

7 HEARING OFFICER CELLI: Thank you. Now, those --
8 that covers all the comments of the people who actually
9 identified themselves on their computers, but then I have a
10 number of people who are call-in users, Call-in User 11, 15,
11 etc., that are just people who telephoned in. If you'd like
12 to make a comment, please speak up. Say your name. Anyone?
13 Anybody on the telephone at all who'd like to make a
14 comment, please speak up now. Okay then, hearing none, I'm
15 going to return the gavel, if you will, to Presiding Member
16 Commissioner Douglas.

17 PRESIDING MEMBER DOUGLAS: All right. Well, thank
18 you for that. I appreciate the parties being here. I think
19 it was really productive and helpful to have this status
20 conference. And so, with that, thank you all, and we'll
21 adjourn the status conference.

22 (The Status Conference adjourned at 11:31 a.m.)

23 --oOo--

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of June, 2013.

/s/ Peter Petty
PETER PETTY CER**D-493

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I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Rebecca R. Hudson
REBECCA R. HUDSON

June 6, 2013